## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

No. 5:07-CR-10-D No. 5:12-CV-374-D

TIMOTHY DEVINE,	)	
Petitioner,	)	
v.	)	ORDER
UNITED STATES OF AMERICA,	)	
Respondent.	)	

On November 20, 2012, the United States responded to Timothy Devine's motion to vacate his conviction and sentence [D.E. 74]. Devine was convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g) and was sentenced to 262 months' imprisonment [D.E. 39]. At sentencing, the court found, inter alia, that Devine had the requisite three predicate convictions under 18 U.S.C. § 924(e) and was an armed career criminal. See id.; see also [D.E. 40]. As such, his statutory minimum sentence was 180 months' imprisonment.

In light of <u>United States v. Simmons</u>, 649 F.3d 237 (4th Cir. 2011) (en banc), Devine no longer has the requisite three predicate convictions under 18 U.S.C. § 924(e). Nonetheless, Devine does have two qualifying felony convictions under 18 U.S.C. § 922(g). <u>See PSR ¶ 14</u>, 16. As such, Devine's conviction remains valid, but his maximum prison sentence is 120 months. Given Devine's sentence of 262 months' imprisonment, the court grants the motion to vacate Devine's sentence [D.E. 68]. The United States shall transport Devine to this district for resentencing.

SO ORDERED. This 28 day of December 2012.

IAMES C. DEVER III

Chief United States District Judge